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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JUNIPER NETWORKS, INC. and APSTRA, INC., Plaintiff, v. SWARM TECHNOLOGY LLC, Defendant.	Case No. 3:20-CV-03137-JD **NOTICE OF RELATED ADMINISTRATIVE PROCEEDING**

By and through this Notice, Defendant Swarm Technology LLC ("Swarm") hereby advises and informs the Court of an administrative matter related to the instant case, namely *Inter Partes* Review No. IPR2021-01317 ("IPR"). The IPR was filed by Juniper Networks, Inc. ("Juniper") against Swarm with the Patent Trial and Appeal Board ("PTAB") at the U.S. Patent &

Trademark Office ("USPTO") initially on July 26, 2021. Documents relating to the IPR, along with accompanying Exhibits, are attached for the Court's convenience as Exhibits 1 through 4 hereto.

In addition to fulfilling its perfunctory role, this subject matter of this Notice is relevant because the determination of the PTAB in the IPR could influence the outcome of the instant case. Swarm provides this notice as the parties' general duty of candor and good faith "encompasses an attorney's duty to advise a district court of any development that may affect the outcome of the litigation."[1] The IPR process was implemented "to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs."[2] As outlined in 35 U.S.C. § 315(e)(2), a final decision in an IPR may have estoppel effect on both the petitioner in the IPR, as well as real parties in interest.[3] Thus, depending on the outcome of the recently filed IPR, Amazon may be estopped from raising in this Court any invalidity defenses it "raised or reasonably could have raised during the IPR."[4]

The IPR petition alleges the claims in the Iniguez '777 patent are invalid as being obvious under 35 U.S.C. §103. They aren't, of course, because the architecture described in the prior art used to support obviousness (Leong, U.S. Patent No. 6,006,249) contemplated a processing architecture with a passive "memory queue" interacting with several "processing units," whereas the architecture described by Iniguez is a new processing architecture where a CPU interacts with a "task pool" that interacts with an unlimited number of "co-processors." If the claims recited in the Iniguez '777 patent were obvious (as alleged by Juniper and Amazon in their original IPR petition), the data processing industry (Leong and the other art of record) would likely have

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[1] *Virginia Innovation Sciences, Inc. v. Samsung Electronics Co.*, 938F. Supp. 2d 713, 754 (E.D. Vir. 2014).- The *Samsung* court held that "[t]he parties should have notified this Court of the IPR petition as soon as it was filed, and failure to do so appears, at least to the undersigned Judge, to have been a glaring omission." *Id.* at 760.

[2] Changes to Implement Inter Partes Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 Fed. Reg. 48680, 48680 (Aug. 14, 2012)2.

[3] *See*, 35 U.S.C. § 315(e)(2).

[4] *Id.*

evolved into the processing architecture claimed in the '777 patent. They didn't, as evidenced by the rapid adoption of the Iniguez processing architecture over the past half decade. These issues will be addressed in the IPR and do not need to be further elaborated here.

Dated: August 24, 2021

Respectfully submitted,

By */s/Michael Kelly*

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2021, I caused the foregoing document to be served via the Court's CM/ECF system on all counsel of record per Local Rule CV-5(5).

/s/*Suneel Jain*
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